



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 4TH DAY OF FEBRUARY, 2025

PRESENT

THE HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR

AND

THE HON'BLE MR JUSTICE K. V. ARAVIND

CRIMINAL APPEAL NO. 1728 OF 2017

C/W

CRIMINAL APPEAL NO. 1832 OF 2017

In Crl.A No. 1728/2017

Between:

Kumar @ Madike Kumar
S/o. Kenchaiah,
Aged about 32 years,
R/o. C/o. Marilinganna,
4th Cross, Basavanagudi,
Guthalu Road,
Mandya-571 401.

...Appellant

(By Sri A.V.Ramakrishna, Advocate for
Sri Amruthesh N P., Advocate)

And:

State of Karnataka
East Police Station,
Mandya-571 401,
Represented by S.P.P.,
High Court Complex,
Bengaluru-560001,

...Respondent

(By Sri Vijaykumar Majage, SPP-II)

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by VEERENDRA
KUMAR K M
Location: HIGH
COURT OF
KARNATAKA



This Criminal Appeal is filed u/s.374(2) Cr.P.C praying to set aside the judgment and conviction with fine dated 08.09.2017 passed by the Principal District and Sessions Judge, Mandya, in S.C.No.69/2013 - convicting the appellant/accused No.1 for the offence p/u/s 143, 148, 120(B) and 302 r/w section 149 of IPC.

In Crl.A No. 1832/2017

Between:

Ravikumar @ Kanive @ Kanekumara
S/o Karishetti,
Aged about 27 years,
R/at C/o Balu, 2nd Cross,
Basavanagudi, Mandya,
Mandya District - 571 401.

...Appellant

(By Sri Balakrishna M.R., Advocate)

And:

The State of Karnataka
By East Police Station
Mandya, Mandya District
Represented by State Public Prosecutor,
High Court Building,
Bengaluru-560 001.

...Respondent

(By Sri Vijaykumar Majage, SPP-II)

This Criminal Appeal is filed u/s.374(2) Cr.P.C praying to set aside the judgment and conviction with fine dated 08.09.2017 passed by the Principal District and Sessions Judge, Mandya, in S.C.No.69/2013 - convicting the appellant/accused No.2 for the offence p/u/s 143, 148, 120(b) and 302 r/w section 149 of IPC.

Date on which the appeals were reserved for judgment	10.01.2025
Date on which the judgment was pronounced	04.02.2025



These Criminal Appeals, having been heard & reserved, coming on for pronouncement this day, judgment was delivered therein as under:

CORAM: HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR
and
HON'BLE MR JUSTICE K. V. ARAVIND

CAV JUDGMENT

(PER: HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR)

In S.C.No.69/2013 on the file of the Principal Sessions Judge, Mandya, totally nine (9) accused persons faced trial for the offences punishable under Sections 143, 148, 120B, 302 and 324 of IPC read with Section 149 of IPC. By judgment dated 08.09.2017, the Sessions Judge convicted accused Nos.1 and 2 for the offences punishable under Sections 143, 148, 120B, 302 read with Section 149 of IPC, and accused No.4 for the offences punishable under Sections 143, 148, 120B, 115 and Section 324 read with Section 149 of IPC. Accused Nos.3 and 5 to 9 were acquitted.



Aggrieved by this judgment of conviction accused No.1 has preferred Crl.A.No.1728/2017 and accused No.2 has preferred Crl.A.No.1832/2017. The required facts are as below:

2. On 07.09.2012 at 23.15 hours, the FIR was registered at East Police Station, Mandya City, at the instance of PW3-Harsha K. PW3 reported to the police that about 09.30pm on 07.09.2012, himself, Chidananda, the deceased, one Ashok and some others were standing in front of Srikanteshwara Medical Store at Mandya. Around 10.15pm, accused No.1 Madike Kumara and accused No.2 Kanive Kumara came to that place and picked up quarrel with Chidananda taking objection for Chidananda having asked them to compromise a case. Stating that they would kill him first and then enter into compromise, both accused attacked him. Accused No.2 held him and accused No.1 stabbed him with a knife on the



chest and stomach. Harsha and some others interfered to pacify and then took Chidananda to hospital. Initially FIR was registered for the offence punishable under Section 307 of IPC and after the death of Chidananda, Section 302 of IPC was invoked in the FIR. The investigation revealed a different reason for the offence. The charge sheet states that when Chidananda and his friends were coming out of Rajalakshmi Wines after having drinks, accused were all standing near a saw mill. Having seen Chidananda, all the accused who had already conspired to kill him, wanted to create a situation to pick up quarrel with Chidananda and then accused Nos.2, 4, 5 and 6 started breaking the beer bottles on the road. Chidananda asked them not to cause disturbance to the public by breaking the bottles on the road. This was sufficient for the accused to pick up quarrel with Chidananda and in that course, accused Nos.1 and 2 asked accused No.3 to bring two knives. After



the knives were brought, accused No.1 asked accused No.2 to catch hold of Chidananda and then accused No.1 stabbed Chidananda on his chest and stomach. When Chidananda escaped from their clutches and started running, accused Nos.1, 2 and 4 chased him and then again inflicted injuries.

3. Out of 32 witnesses examined by the prosecution, PW3 to PW6, PW12 to PW15, PW18, PW19 and PW28 are the eyewitnesses. But none of them supported the prosecution. It is for this reason, learned counsel for the appellants Sri A.V.Ramakrishna, appearing on behalf of Sri Amruthesh N.P and Sri M.R.Balakrishna argued that the conviction recorded by the trial court is not sustainable. They argued that the first informant PW3 has not implicated the accused even though he has stated about the incident. His evidence shows that he took Chidananda to hospital for treatment and did not disclose the



names of accused 1 and 2 to the doctor. He may have identified his signatures on Ex.P5 and Ex.P6, but mere identification of signatures cannot be a ground to hold that he was an eyewitness. They also submitted that PW25, the father of Chidananda was not an eyewitness, but the trial court has held that he is an eyewitness and believed his testimony. And referring to the evidence given by PW17, they argued that according to prosecution, accused No.4 inflicted an injury to him with a broken bottle, but he has not supported. Even with regard to recovery of knives, PW27, the witness to mahazar has not supported. Lastly they argued that conviction cannot be recorded at all by placing reliance on the testimony of PW2, the doctor who examined Chidananda. Therefore the conviction judgment cannot at all be allowed to remain.



4. But Sri Vijaykumar Majage, learned SPP-II, arguing for sustaining the conviction and the order on sentence pointed out that the trial court has noted the fact of all the eyewitnesses turning hostile intentionally, PW25 may not be an eyewitness, but he went to the spot very soon after the incident and saw his son being injured. He also went to hospital. The doctor-PW2 has clearly stated that Chidananda had consciousness and he himself gave history taking the names of the accused. In Ex.P5, PW3 has narrated the entire incident. PW3 admits his signature on Ex.P5. If he disowned Ex.P5 when he was examined in the court, it cannot be said that his testimony has to be discarded.

4.1. Referring to recovery of knives at the instance of accused No.1 and 2, Sri Vijaykumar Majage argued that hostile evidence of PW27 does not matter in as much as 'A' group human blood



was detected in the clothes of accused 1 and 2, and Chidananda, and also on the knives. FSL report supports this aspect. This is how the trial court has assessed the evidence and it cannot be said to be erroneous. The trial court has just referred to the evidence of PW3, but has not drawn any inference from his evidence. As has been argued by the appellants' counsel, the trial court has held that PW25 is an eyewitness. Reliance is also placed on the evidence of PW2 and FSL report to record conviction.

5. On re-appreciation of evidence, though it can be stated that the findings recorded by the trial court with reference to evidence of PW25 is incorrect, it is not possible to dislodge the prosecution case merely for the reason that the prominent witnesses have not supported. Reasons are these :



Ex.P5 is the report of incident given by PW3 to the police for registration of FIR. PW3 has not only admitted his signature on Ex.P5 but also stated to have given it to police while he was in the hospital. PW30-the police inspector has stated that PW3 came to police station at 11.15 p.m on 7.9.2012 and lodged a complaint with him as per Ex.P5. Whether PW3 gave it to police in the police station or in the hospital, it does not matter much. Fact remains that Ex.P5 was given by PW3. In Ex.P5, PW3 has clearly stated the date and time of incident and has clearly taken the names of accused Nos. 1 and 2 and described their overt acts. When PW3 was examined in the court he simply stated that, as soon coming to know about assault on one person while he was in his mutton shop, he went to the place of incident and having seen Chidananda lying on the ground with injuries, he and PW5 took him to hospital. It is clear that PW3 changed his version when he was examined in



the court as a witness. But it can be demonstrated that the evidence of PW3 to the extent of not implicating the accused is falsehood. The evidence of PW2, who examined Chidananda when he was alive assumes relevancy. PW2 has stated that on 7.9.2012 about 10.45 p.m when he was in casualty department, Harsha K, i.e., PW3 brought Chidananda and admitted him to hospital, and gave history that Kumara @ Madike Kumara i.e., accused No.1 stabbed Chidananda with a knife. That means according to PW2, it was PW3 who gave history. It is true that PW2 also stated that injured himself gave history. Learned counsel for appellants emphasized this statement to be a major discrepancy in the evidence of PW2. It is true that it looks like a discrepancy when his two statements are seen. But his statement that Chidananda gave history cannot be a correct answer, and his first statement that Harsha K gave statement can be held to be correct with help of



history recorded by PW2 in Ex.P4, the MLC register extract. It is clearly recorded in Ex.P4 that Harsha brought Chidananda to hospital and gave history that Kumara stabbed him with a knife. Here the pronoun 'him' refers to Chidananda. If Chidananda himself had given history, he would have stated, "Kumara stabbed me". Moreover in Ex.P4, it is not written that Chidananda was having consciousness, PW3 has stated in examination-in-chief that when he took Chidananda to hospital, the latter had no consciousness. Therefore it could be very well inferred that PW3 himself gave history, and the answer of PW2 as referred to above might be a stray answer, as he could not have stated what is not written in Ex.P4. Above all, one answer of PW3 in his cross-examination reflects his conduct. As he was treated hostile, public prosecutor cross-examined him and gave a suggestion that Chidananda himself gave history. To this suggestion he could have given a definite answer



either admitting it or denying it. As his intention was not to support prosecution, it was quite obvious that he would not have stated that he gave the history taking the name of accused; instead he gave an evasive answer, "I do not know". This answer only shows that he wanted to suppress something. The answer of PW2 could be a stray answer. It is not important to assess the evidence of PW3 and therefore whatever he stated exculpating the accused cannot be believed to be true and the only inference that can be drawn is that he was an eyewitness to the incident, and he turned hostile deliberately.

6. It is true that other eyewitnesses have turned hostile, and the public prosecutor's efforts to discredit them has not been successful, but it can be demonstrated with the help of evidence of PW3 that PW5 has not deposed the truth. PW3 has taken the name of PW5 in his examination-in-chief



stating that the latter was with him when Chidananda was taken to hospital. Even in Ex.P5 it is clearly stated that PW5 was present when the incident occurred and both of them pacified the quarrel. Ex.P5 was the first report which appears to be taint free containing truth.

7. PW25 is not an eyewitness. The trial court has wrongly held that PW25 is an eyewitness. If paras 1 and 2 of his examination-in-chief are read, an inference can be drawn that after he came to know the incident of assault on his son, he went to that place. But as discussed above, a clear inference can be drawn that Chidananda met death due to assault made on him by accused No.1 and accused No.2. PW2 noticed presence of prominent injuries on the chest and abdomen, PW1 was the doctor who conducted autopsy and also noticed eight ante mortem injuries, same as noticed by



PW2. The evidence of PW1 and PW2 is only corroboratory.

8. The next corroboration is found in FSL report, but before that seizure of knives MO1 and MO2 is to be referred here. From the evidence of PW31, who conducted investigation, it is found that after the arrest of accused Nos.1 and 2, they gave their voluntary statements and disclosed the place where they had hidden the knives, MO1 and MO2 and then they took him and panchas to the house of accused No.2. The knives were kept under a cot in the house of accused No.2 and they produced them before PW31. He seized them under mahazar Ex.P27. PW.27 is the independent witness examined to prove seizure of MO1 and MO2 under Ex.P27, but he did not support. Sri. A.V.Ramakrishna pointed out that seizure under Ex.P27 is unbelievable not only for the reason that PW27 did not support, but also for another reason



that much before Ex.P27 was drawn, both accused 1 and 2 were produced before the Magistrate who later on remanded them to judicial custody at 2.30 pm on 9.9.2012 as becomes evident from Ex.D1 which PW31 has admitted. Therefore seizure of MO1 and MO2 based on voluntary statements becomes doubtful. Sri. Vijaykumar Majage replied that mentioning of date in Ex.P27 might be a mistake because as per the evidence of PW31 both accused 1 and 2 were arrested on 8.9.2012 and their voluntary statements were also recorded on the same day. Therefore the seizures were effected on 8.9.2012, not 9.9.2012.

9. It is true that Ex.P27 bears the date 9.9.2012 and the time of writing it is shown as in between 4.30 p.m. and 5.30 p.m. Ex.D1 is the remand application confronted to PW31 while cross examining him. PW31 had to admit the remand application, he could not have disowned it. And if



Ex.P27 and Ex.D1 are juxtaposed, the discrepancy as pointed out by Sri. A.V.Ramakrishna can be noticed. If accused 1 and 2 had been remanded to judicial custody at 2.30 p.m. on 9.9.2012, recovery of knives becomes doubtful, but this inference cannot be drawn because accused 1 and 2 were arrested on 8.9.2012 and their voluntary statements leading to discovery were recorded soon after their arrest. Their clothes were also seized on 8.9.2012. FSL report, Ex.P21 testified by PW16, the FSL expert, shows presence of 'A' group human blood in the clothes of Chidananda, the clothes of accused 1 and 2, and the knives. PW16 was not cross examined at all and therefore the evidence of PW16 proved presence of 'A' group human blood not only in the clothes of Chidananda but also in the clothes of accused 1 and 2, and the knives. For this reason the discrepancy in mentioning the date and time of drawing Ex.P27 when compared to time mentioned in Ex.D1 can be



ignored and it can be held that seizures of incriminating materials cannot be doubted.

10. Sri M.R.Balakrishna has placed reliance on the judgment of the Supreme Court in Alauddin and Others vs State of Assam and Another [2024 SCC Online SC 760]. It appears that this judgment has been referred with reference to the evidence given by PW25, the father of Chidananda who is held by the trial court to be an eyewitness. In para 7 of the cited judgment, meaning of contradiction is explained. But it is to be stated that, as discussed above PW25 is not an eyewitness and the trial court's conclusion that he is an eyewitness is held to be incorrect. Ignoring the evidence of PW25, it can still be held that prosecution case stands established. Therefore this judgment of Supreme Court is not helpful to the appellants.



11. The other judgment in the case of Harbeer Singh vs Sheeshpal and Others [(2016) 16 SCC 418] discusses the broad principles of criminal jurisprudence relating to appreciation of evidence. A decision whether a witness is believable or not, depends on facts and circumstances of each case and what is found in the cited judgment are conclusions drawn on the facts and circumstances therein. Therefore this judgment is of no assistance to the appellants.

12. The above discussion only shows that the offence under Section 302 of IPC gets established against accused 1 and 2 beyond reasonable doubt. Accused 1 and 2 have been convicted for the offences punishable under Sections 143, 148, 120B of IPC. So far as offence under Section 120B is concerned, the prosecution has relied on the testimony of PW26 and the trial court has held his evidence to be sufficient to convict accused 1 and



2 for conspiracy. If testimony of PW26 is assessed, it may be stated that his evidence is wholly unreliable. PW26 was working as a security guard in a petrol bank at Ramanagara. He has stated that one day prior to the date of incident he and CW16-Ananda came out of a hotel and saw accused 1, 2 and 4 standing near Siddarameshwara Traders and talking with each other to commit murder of Chidananda. They also saw three or four persons standing with accused 1 and 2. His cross-examination shows Chidananda was his relative and he was visiting his house once in three days. If he had heard accused 1, 2 and 4 planning to cause the death of Chidananda he could have alarmed him. Even after the death of Chidananda he had been to hospital and the police were there, he did not inform the police immediately. He has stated that he gave statement before the police twenty days after the incident. This makes his



testimony wholly unreliable. Therefore charge under Section 120B does not get establish at all.

13. The investigating officer unnecessarily included the offences under Sections 143, 148 of IPC without there being any material. Merely because there were nine accused these offences appear to have been included. The trial court could have applied its mind while framing the charges. Another error is when the trial court arrived at a conclusion that accused 3, 5 to 9 were to be acquitted, it could not have invoked Section 149 of IPC against accused 1 and 2 only in connection with the offence under Section 302 of IPC and accused No.4 for the offence under Sections 115 and 324 of IPC. This is where the trial court has gone wrong. Therefore so far as appellants 1 and 2 are concerned conviction for the offences under Sections 143, 148 and 120B of IPC



cannot be sustained and the sentence imposed on them for these offences is required to be set aside.

14. From the above discussion, we proceed to pass the following:

ORDER

- (i) Appeals are partly allowed.
- (ii) Conviction recorded by the trial court against appellants for the offence punishable under Section 302 of IPC and sentence imposed on them is sustained.
- (iii) Appellants are acquitted of the offences punishable under Sections 120B, 143, 148 and sentence imposed on them for these offences is set aside.
- (iv) The appellants are entitled to set off for the period already they have spent in the jail only for the



purpose of Section 432 of Cr.P.C if
the Government takes a decision
to give them the benefit of
remission.

Sd/-
(SREENIVAS HARISH KUMAR)
JUDGE

Sd/-
(K. V. ARAVIND)
JUDGE

CKL
List No.: 1 Sl No.: 1